

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: August 19, 2003

To: The Commission
(Meeting of August 21, 2003)

From: Alan LoFaso, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 584 (Alarcon): Advertising.**
As Amended July 7, 2003

Legislative Subcommittee Recommendation: Support

Summary: This bill would require certain businesses that advertise a service or product in a language other than English to provide information regarding the service or product advertised in that language.

Digest: Existing law, PU Code §2890, requires written or oral solicitation materials used to obtain an order for a product or service to use the same language as the written order.

Existing law, D. 95-12-056, requires each local telecommunications carriers, to provide bills, notices, and access to bilingual customer service representatives in the language in which prior sales were made.

This bill would require specified businesses, including wireline and wireless telecommunications carriers, that advertise a service or product in Spanish, Chinese, Tagalog, Vietnamese or Korean to provide information, orally or in writing, on the rates, terms and conditions for providing the service or product that was advertised, upon purchase and by request of a consumer.

This bill would apply to the following businesses: financial institutions, insurance, public utilities, money transferers, automobile dealers, and check cashers.

This bill would exempt the following:

- Businesses with 25 or fewer employees from its provisions when applicable to consumers living more than 50 miles from the location of the business and provides that trademark affiliations do not untrigger this exemption.

- Non-profit organizations.
- Persons with gross revenues of less than \$10,000,000 per year, unless affiliated with a person with gross revenues exceeding \$10,000,000.
- Transactions relating to persons outside of the relevant market for services or products advertised solely within a specific region.
- Transactions relating to consumers who request the information after the purchase is made or more than 30 business days after the advertisement date.

This bill would provide specific requirements applicable to wireline telephone service providers and commercial mobile radio service providers (wireless carriers) that advertise a specific product or service in Spanish, Chinese, Tagalog, Vietnamese or Korean. Specifically, this bill would require:

- Providers would be required to provide, orally or in writing, sufficient information for the consumer to make an informed choice about the specific product or service advertised.
- Providers who principally use one of these five languages to complete an order for products or services to provide a written confirmation in that language either within 14 days of the order (or 14 *business* days for wireless carriers).

This bill would additionally require wireline carriers to include a toll-free telephone number to contact the provider for repair and consumer service and to make billing inquiries in the language in which the product is advertised. This bill would additionally deem a wireless carrier to have complied with the disclosures required above, if the information is provided within 14 days of initial contact and the provider permits the consumer to rescind any agreement within seven days of receiving the written information.

This bill would not become operative until January 1, 2005.

Analysis: According to the Latino Issues Forum (LIF), sponsor of SB 584, Latino and Asian markets are the fastest growing customer segments in our state economy. However, many businesses do not accommodate these or other limited-English speaking consumers by advertising in their language. This leaves them susceptible to dishonest market practices that stem from translation problems.

LIF argues that SB 584 will “help curb the exploitation of California’s largest second language consumers, [and] also create an ethical business environment where second language consumers are able to make informed decisions.”

Texas Law

SB 584 is modeled after the Texas Utilities Code §26.66, which requires certificated telecommunications utilities (CTU) to provide the following information in Spanish, upon the request of the customer:

- Information on rates, key terms and conditions;
- New services, discount programs, and promotions;
- Access to repair service and customer service;
- Answers to billing inquiries; and
- Ballots for services requiring a vote by ballot.

§26.66 also requires a CTU that advertises a service or product in any language other than English or Spanish to provide the same information above related to that service or product in that language, upon the request of an applicant or customer.

Opponents argue this bill could limit the number of services advertised to limited-English speaking consumers. They also believe compliance with this bill could be costly due to the multiple number of translations each advertisement would generate. Industry opponents have expressed concerns regarding the “open-endedness” of the elements that would be required to be translated. Recent amendments have clarified the specificity of these requirements.

Telecommunications Bill of Rights

A draft of the Telecommunications Bill of Rights issued on June 6, 2002, in Rulemaking (R.) 00-02-004 addresses the issue of bilingual consumer services. Proposed Rule 2C would require service agreements and contracts to be available in each language the carrier uses for solicitations. The intent of this provision is that customers should be able to read, understand and make informed choices about service contracts before making a commitment.

The new draft of the Bill of Rights, released on July 24, 2003, does not specifically address the issue of bilingual consumers services. This issue has of late been left to subsequent phases of this proceeding. (See, R. 00-02-004, Draft Decision of Commissioner Wood (Mailed 7/24/03), Agenda ID #733 at 37.)

Legislative History:

Assembly Judiciary: 10-4 (pass) (7/1/03)
Senate Floor: 23-15 (passed to Assembly) (6/2/03)
Senate Judiciary: 5-1 (do pass) (5/13/03)

SUPPORT/OPPOSITION

Support: Latino Issues Forum, Greenlining Institute

Opposition: Alliance of Automobile Manufacturers, American Insurance Association, AT&T, Automotive Repair Coalition, California Bankers Association, California Broadcasters Association, California Chamber of Commerce, California Financial Services Association, California Motor Car Dealers Association, California Newspaper Publishers Association, Cellular Telecommunications & Internet Association, Cingular Wireless, KVNR/1480am, KWIZ/Sondio 96.7FM, MBNA, NextTel Communications, Sprint, Verizon Communications, Verizon Wireless

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Date: August 19, 2003

BILL LANGUAGE:

BILL NUMBER: SB 584 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JULY 7, 2003
AMENDED IN ASSEMBLY JUNE 26, 2003
AMENDED IN SENATE MAY 20, 2003
AMENDED IN SENATE MAY 5, 2003
AMENDED IN SENATE APRIL 21, 2003

INTRODUCED BY Senator Alarcon

FEBRUARY 20, 2003

An act to add Section 17531.3 to the Business and Professions Code, to add Sections 1726 and 1727 to the Civil Code, to add Section 395 to the Insurance Code, and to add Sections 2898 and 2898.1 to the Public Utilities Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 584, as amended, Alarcon. Advertising.

Existing law makes it unlawful for a business to engage in specified practices relating to the advertisement of its products or services. Under existing law, those practices may constitute acts of unfair competition that may be prosecuted in a civil action brought by, among others, the Attorney General.

This bill would require , with specified exceptions, beginning January 1, 2005, a person operating in specified businesses, including financial institutions, automobile dealers, insurance , and public utilities, who ~~advertises~~ advertise rates, terms, and conditions for a service or product in designated languages to provide, upon the request of a consumer, specified materials to him or her and to notify consumers of the right to request these materials. ~~The bill would exempt from these requirements, as specified, a nonprofit organization and a person with annual gross revenues of less than \$10,000,000.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17531.3 is added to the Business and Professions Code, to read:

17531.3. (a) A person who advertises a service or product in Spanish, Chinese, Tagalog, Vietnamese, or Korean shall *provide, orally or in writing, information on the rates, terms, and conditions of the service or product that was advertised and shall make* available upon purchase by a consumer and at his or her request, information on ~~key terms~~ rates, terms, and conditions for providing the service or product that was ~~advertised~~ purchased .

(b) A person who advertises a service or product in Spanish,

Chinese, Tagalog, Vietnamese, or Korean shall notify consumers of their right to request the materials described in subdivision (a).

(c) A person with 25 or fewer employees that advertises from a specific location shall comply with the requirements of this section for a consumer residing within 50 miles of the person's business location.

(d) A person may comply with the requirements of subdivisions (a) and (b) by either of the following means:

(1) Providing the information described in subdivision (a) within 14 days of its initial contact with the consumer.

(2) Providing the consumer with a telephone number to a call center where the information described in subdivision (a) may be obtained.

(e) Unless otherwise required by another provision of law, this section does not require a person who advertises in a language other than English to translate a contract or a tariff into those languages.

(f) A person with 25 or fewer employees is not subject to this section solely because another person with the same franchise, brand, or trademark name has advertised a service or product in Spanish, Chinese, Tagalog, Vietnamese, or Korean.

(g) The following definitions apply for the purposes of this section:

(1) "Advertise" means to disseminate or cause to be disseminated by television, radio, newspaper, written material, outbound telemarketing, or the Internet to market to, and attract, a customer.

(2) "Consumer" means a natural individual.

~~—(3) "Key terms" means information necessary for a consumer to make an informed choice about the service or product, including, but not limited to, the following:~~

~~—(A) Confirmation letters for services and products for utility services.~~

~~—(B) Repair and customer services, including the process to make a billing inquiry concerning public utility services, and rates, terms, and conditions.~~

~~—(C) Contracts for persons subject to Section 1632 of the Civil Code.~~

~~—(4)~~

(3) "Person" has the same meaning as in Section 17506 and includes only a person who operates in the following businesses:

~~—banking— financial institution ,~~
insurance, public utility, ~~—credit union,~~ money transferer, automobile dealer, or check cashing.

(h) This section does not apply to the following:

(1) A nonprofit organization that is exempt from the payment of income taxes under Section 501(c)(3) of the Internal Revenue Code.

(2) A person with annual gross revenues of less than ten million dollars (\$10,000,000) unless that person is an agent, subsidiary, franchisee, or affiliate of a person with annual gross revenues of ten million dollars (\$10,000,000) or more.

(i) *If the specific product or service is advertised in a specific region of the state, the requirements of this section shall apply only to persons in the relevant market area where the advertisement was placed in that region.*

(j) *The requirements of this section only apply when the request of the consumer to receive the material described in subdivision (a) is made at the time of the purchase of the policy and when the purchase of the service or product occurs within 30 business days of the date of the advertisement.*

(k) Persons who meet the requirements under Sections 1726 and 1727 of the Civil Code, Section 395 of the Insurance Code, or Sections 2898 and 2898.1 of the Public Utilities Code, shall be deemed in compliance with the requirements of this section.

(l) This section shall become operative on January 1, 2005.

SEC. 2. Section 1726 is added to the Civil Code, to read:

1726. (a) An auto dealer that advertises, rates, terms, and conditions for a specific service or product in Spanish, Chinese, Tagalog, Vietnamese, or Korean shall, upon the request of a consumer who has purchased in this state the advertised service or product, provide information on the rates, terms, and conditions included in the advertisement for the specific service or product that was advertised by that auto dealer.

(b) An auto dealer who originates in this state an advertisement of rates, terms and conditions Spanish, Chinese, Tagalog, Vietnamese, or Korean shall notify consumers of their right to request the materials described in subdivision (a).

(c) The following definitions apply for the purposes of this section:

(1) "Advertise" means to disseminate or cause to be disseminated by television, radio, newspaper, or Internet, as defined in Section 17538 of the Business and Professions Code, any paid message for purpose of selling a service or a product.

(2) "Consumer" means a natural individual.

(d) An auto dealer subject to this section may comply with the requirements of subdivisions (a) and (b) by either of the following means:

(1) Providing the information described in subdivision (a) within 14 business days of the consumers initial request for the information.

(2) Providing the consumer with a location or telephone number where the information described in subdivision (a) may be obtained.

(e) This section does not apply to a nonprofit organization that is exempt from the payment of income taxes under Section 501(c)(3) of the Internal Revenue Code.

(f) If the specific service or product is advertised in a specific region of the state, the requirements of this section shall apply only to persons in the relevant market area where the advertisement was placed in that region.

(g) The requirements of this section only apply when the request of the consumer to receive the material described in subdivision (a) is made at the time of the purchase of the service or product and when the purchase of the service or product occurs within 30 business days of the date of the advertisement.

(h) Unless otherwise required by another provision of law, this section does not require a person who advertises in a language other than English to translate a contract into those languages.

(i) A person with 25 or fewer employees is not subject to this section solely because another person with the same franchise, brand, or trademark name has advertised a service or product in Spanish, Chinese, Tagalog, Vietnamese, or Korean.

(j) This section shall become operative on January 1, 2005.

SEC. 3. Section 1727 is added to the Civil Code, to read:

1727. (a) A financial institution that advertises, rates, terms and conditions for a specific service or product in Spanish, Chinese, Tagalog, Vietnamese, or Korean shall, upon the request of a consumer who has purchased in this state the advertised service or product,

provide information on the rates, terms, and conditions included in the advertisement for the specific service or product that was advertised by that financial institution.

(b) A financial institution who originates in this state an advertisement of rates, terms and conditions Spanish, Chinese, Tagalog, Vietnamese, or Korean shall notify consumers of their right to request the materials described in subdivision (a).

(c) The following definitions apply for the purposes of this section:

(1) "Advertise" means to disseminate or cause to be disseminated by television, radio, newspaper, or Internet, as defined in Section 17538 of the Business and Professions Code, any paid message for purpose of selling a service or a product.

(2) "Consumer" means a natural individual.

(d) A financial institution subject to this section may comply with the requirements of subdivisions (a) and (b) by either of the following means:

(1) Providing the information described in subdivision (a) within 14 business days of the consumers initial request for the information.

(2) Providing the consumer with a location or telephone number where the information described in subdivision (a) may be obtained.

(e) This section does not apply to a nonprofit organization that is exempt from the payment of income taxes under Section 501(c)(3) of the Internal Revenue Code.

(f) If the specific service or product is advertised in a specific region of the state, the requirements of this section shall apply only to persons in the relevant market area where the advertisement was placed in that region.

(g) The requirements of this section only apply when the request of the consumer to receive the material described in subdivision (a) is made at the time of the purchase of the service or product and when the purchase of the service or product occurs within 30 business days of the date of the advertisement.

(h) Unless otherwise required by another provision of law, this section does not require a person who advertises in a language other than English to translate a contract into those languages.

(i) A person with 25 or fewer employees is not subject to this section solely because another person with the same franchise, brand, or trademark name has advertised a service or product in Spanish, Chinese, Tagalog, Vietnamese, or Korean.

(j) This section shall become operative on January 1, 2005.

SEC. 4. Section 395 is added to the Insurance Code, to read:

395. (a) An insurer who advertises rates, terms, and conditions for a specific policy in Spanish, Chinese, Tagalog, Vietnamese, or Korean shall, upon the request of a consumer who has purchased the advertised policy, provide the following material in that other language:

(1) Information on the rates, terms, and conditions for providing the policy that was specifically advertised by that insurer. Information provided by the insurer under this section is governed by Section 394.

(2) In addition to any other form of compliance, an insurer may comply with the requirement of paragraph (1) by providing information that does all of the following:

(A) Summarizes the principal types and amounts of coverage under the policy purchased by the consumer.

(B) Informs consumers on cancellation policies.

(C) Informs consumers about payment, such as the date of payment and the amount of payment.

(b) An insurer who originates in this state an advertisement of rates, terms, and conditions for a specific policy in Spanish, Chinese, Tagalog, Vietnamese, or Korean shall notify consumers of their right to request the materials described in subdivision (a). An insurer may also provide additional verbal or written information in the advertised language, in order for the consumer to make an informed choice about these or other services and products.

(c) The following definitions apply for the purposes of this section:

(1) "Advertise" means to disseminate or cause to be disseminated by television, radio, Internet, as defined in Section 17538 of the Business and Professions Code, or newspaper, any paid message for purpose of selling a specific policy to a consumer.

(2) "Consumer" means a natural individual.

(d) An insurer subject to this section may comply with the requirements of subdivisions (a) and (b) by either of the following means:

(1) Providing the information described in subdivision (a) within 14 business days of the consumers initial request for the information.

(2) Providing the consumer with a location or telephone number where the information described in subdivision (a) may be obtained.

(e) If the specific policy is advertised in a specific region of the state, the requirements of this section shall apply only to persons in the relevant market area where the advertisement was placed in that region.

(f) The requirements of this section only apply when the request of the consumer to receive the material described in subdivision (a) is made at the time of the purchase of the policy and when the purchase of the service or product occurs within 30 business days of the date of the advertisement.

(g) Unless otherwise required by another provision of law, this section does not require a person who advertises in a language other than English to translate a policy into those languages.

(h) A person with 25 or fewer employees is not subject to this section solely because another person with the same franchise, brand, or trademark name has advertised a service or product in Spanish, Chinese, Tagalog, Vietnamese, or Korean.

(j) This section shall become operative on January 1, 2005.

SEC. 5. Section 2898 is added to the Public Utilities Code, to read:

2898. (a) A provider of wireline telephone service that advertises a specific telecommunications product or service in Spanish, Chinese, Tagalog, Vietnamese, or Korean shall provide in that language, orally or in writing, sufficient information for the consumer to make an informed choice about the specific product or service advertised.

(b) If a wireline telephone provider principally uses Spanish, Chinese, Tagalog, Vietnamese, or Korean to complete an order for telecommunications products or services, the provider shall provide the consumer, after purchase of such products or services, a written confirmation of the order in that language, which shall include the toll-free telephone number or numbers to contact the provider for repair and consumer services and to make billing inquiries, in that language, within 14 days of the order.

(c) A wireline provider shall be presumed to have complied with

subdivisions (a) and (b) if the information referenced in subdivision (a) is provided to the consumer in writing within 14 days of the initial contact with the consumer and the wireline provider permits the consumer to rescind any agreement with the wireline provider within seven days of receipt of the written information.

(d) The following definitions apply for purposes of this section:

(1) "Wireline telephone service provider" means a telephone corporation, as defined in Section 234, but shall not include providers of "wireline services" that are subject to Section 2892.

(2) "Advertise" means disseminate or cause to be disseminated to the public by television, radio, outbound telemarketing, newspaper, or the Internet, as defined in Sections 17538 and 17531 of the Business and Professions Code, any message to market to and attract a consumer.

(3) "Consumer" means a natural individual.

(d) This section does not require a wireline telephone service provider to provide information to non-English-speaking consumers that is not also provided to English-speaking consumers under similar circumstances.

(e) This section shall become operative on January 1, 2005.

SEC. 6. Section 2898.1 is added to the Public Utilities Code, to read:

2898.1. (a) A provider of commercial mobile radio service that advertises a specific wireless product or service in Spanish, Chinese, Tagalog, Vietnamese, or Korean shall provide in that language, orally or in writing, sufficient information for the consumer to make an informed choice about the specific product or service advertised.

(b) If a commercial radio service provider principally uses Spanish, Chinese, Tagalog, Vietnamese, or Korean to complete an order for wireless products or services, the provider shall provide the consumer, after purchase of such products or services, a written confirmation in that language within 14 business days of the order.

(c) The following definitions apply for purposes of this section:

(1) "Commercial mobile radio service" mean a telephone corporation subject to Section 2892.

(2) "Advertise" means disseminate or cause to be disseminated to the public by television, radio, newspaper, or the Internet, as defined in Sections 17538 and 17531 of the Business and Professions Code, any message to market to and attract a consumer.

(3) "Consumer" means a natural individual.

(d) This section does not require a commercial radio service provider to provide information to non-English-speaking consumers that is not also provided to English-speaking consumers under similar circumstances.

(e) This section shall become operative on January 1, 2005.